

TESTIMONY IN FAVOR OF HB 84
SENATE BUSINESS, LABOR AND ECONOMIC AFFAIRS COMMITTEE
JERRY KECK, ADMINISTRATOR
EMPLOYMENT RELATIONS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
FEBRUARY 11, 2011

Mr. Chairman and members of the committee, my name is Jerry Keck. I am the administrator of the Employment Relations Division of the Department of Labor and Industry. First, I want to thank Rep. Boland for agreeing to carry this bill.

HB 84 is a department cleanup bill related to the Wage Payment Act. The Wage Payment Act provides an administrative process for employers and employees to resolve disputes over unpaid wages.

Section 1 of the bill clarifies the definition of who is an employee. Currently the statute says that an employee is any person who works for another for hire. Technically, that definition could be interpreted to include an independent contractor. The whole intent of our statutes defining independent contractors is to make a clear distinction between who is an employee and who is an independent contractor. Independent contractors are not receiving "wages" from an employer. They have entered into a contract with a hiring agent. This section makes clear that an independent contractor is not an employee for purposes of the Wage Payment Act and may not file a "wage" claim

Section 2 of the bill is the result of a legislative audit. The auditor noted that the statute requires that the commissioner of labor shall deposit wages collected into the wage collection fund. In a typical wage claim where the employer agrees that wages are owed, the employer issues a paycheck made payable to the employee and sends it to the department. The department then issues an order closing the case and sends that to the employer at the same time that the notice and the paycheck are sent to the employee. Having to deposit the check into the wage collection fund in these instances would add approximately 24 days to the time when the department can send the state warrant to the employee. And it would add cost for the issuing of a state warrant. Checks are deposited in the wage collection fund when the department is unable to locate the person who is owed the money. This typically only happens in cases where there are multiple employees who are owed wages and by the time the case is resolved the department cannot locate some of the employees.

Section 3 is simply a renumbering of the reference to the federal definition of an "outside salesman". In 2004 that reference was changed from 29 CFR 541.5 to 29 CFR 541.500. This only corrects the reference in our statute.

Mr. Chairman, and members of the Committee, the department is requesting your support for HB 84. I will try to answer any questions that you may have. Thank you.